Association of State Wetland Managers (ASWM)
Assumption Project Workgroup Call

January 13, 2020
3:00 – 4:30 pm Eastern
Vi GoToMeeting

Workgroup Call Participation

Assumption 404 Project Workgroup		
1 Adams	Collis	NH DES
2 Bax	Stacia	MO DNR
3 Biddle	Mark	DENRC
4 Brockette	Lewis	MN BWSR
5 Chamberlain	Eliodora	EPA Region
6 Chemerys	Ruth	EPA OWOW
7 Clearwater	Denise	MD DE
8 Garwood	Anne	MIDEQ
9 Hare	Michael	RES
10 Hobbs	Jasper	ACWA
11 *Hurld*	*Kathy*	*EPA HQ*
12 Johnson	Laura	NE DEQ
13 *Kelly*	*Stephanie*	*EPA HQ*
14 Lapierre	Laura	VT DEC
15 Lemm	Les	MN BWSR
16 Lesisz	David	AZ DEQ
17 Link	Marty	NE DEQ
18 Lounds	Amy	MI DEQ
19 Martain	Audra	NEIWPCC
20 Mason	Heather	FL DEP
21 Mettler/Wolff	Martha Clark/Brian	IN DEM
22 Metz/Ryan	Eric/Bill	Oregon DSL
23 Pendergast	Jim	ASWM Volunteer
24 Poage	Barbara	Oregon DSL
25 Polly	Dane	NE DEQ
26 Preston	Heather	SC DHEC
27 Rach	Timothy	FL DEP
28 Robertson	Andy	Saint Mary's University
29 Rypkema	Jim	AK DEC
30 Schiller	Starsha	ASWM
31 Steik	Maria	ASWM
32 Wesson	Dolores	EPA HQ
33 Wilhelm	HJosh	NE DEQ
34 Williams	Joe	Ecosystem Partners
35 Wojoski	Paul	NC DENR
36 Zollitsch	Brenda	ASWM
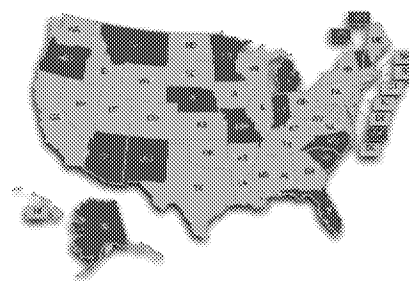
Call Agenda

3:00 – 3:30 pm --- Full Workgroup

* Project update
* Subworkgroup updates
* Group discussion about sustainable funding national dialogue and webinar + next steps

3:30 – 4:30 pm --- FOCUS: Program Development Subworkgroup

* Acceptable frameworks for assumed §404 Programs
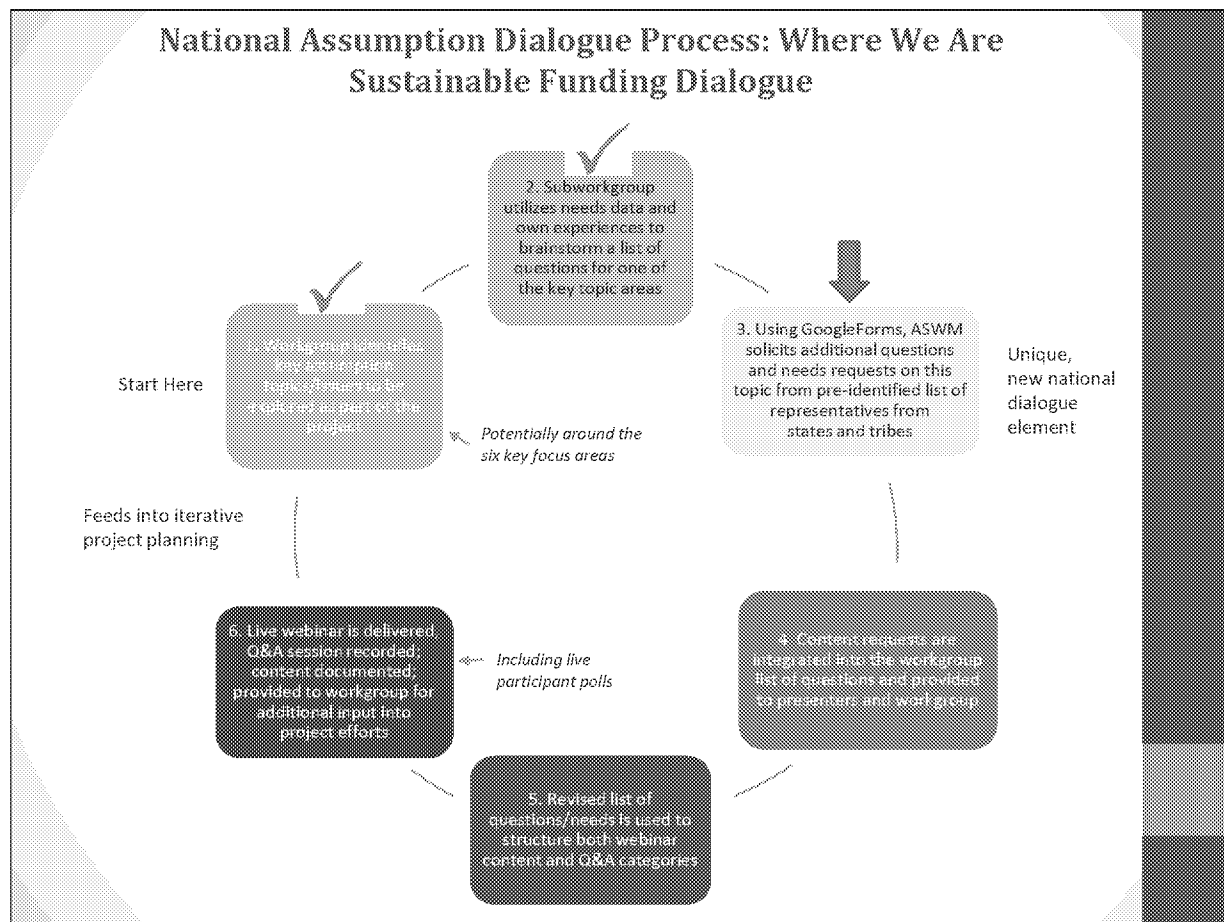
Webinar #1: Assumption 101

- **Welcome & Introductions** - *Brenda Zollitsch, Moderator*

- **Introduction to Assumption** - *Kathy Hurld, EPA*
  - What is Assumption?
  - EPA's current efforts to encourage Assumption
  - Basic overview of steps in the assumption process and requirements

- **State Examples of Assumption**
  - Why would states or tribes assume? (ASWM?)
  - What are alternatives to assumption (SPGP) - *Heather Mason, Florida*
  - Michigan's Program (Assumed 1984) - *MI Representative*
  - New Jersey's Program (Assumed 1994) - *NJ Representative*

- **Introduction of ASWM's Assumption Project** - *Brenda Zollitsch, ASWM*
  - ASWM Hot Topics Webinar on 404(g) Proposed Rule
  - Planned project outputs and outcomes (incl. webinar series)
  - How to participate in ASWMs National Assumption Dialogue
  - Additional Resources

- **Q&A, Wrap-up, Invite to Next Assumption Webinars** - *Brenda Zollitsch, Moderator*

ASWM ASSUMPTION WPDG PROJECT WEBINAR SERIES
Draft Last revised: 12-6-19

Webinar	Assumption Topic	Est. Delivery	Webinar Users
	Assumption 101: What, Why, Current Initiatives, Intro to ASWM Project	Jan 21	EPA, ASWM, FL, MI, NJ
	Developing Funding Strategies to Explore, Build, Implement and Sustain Assumed 404 programs	Feb	ALL
	Identifying and Documenting Assumable Waters/What you know about waters or wetlands in your state – what do we gain?	Mar	ALL
	EPA's new Assumption Rule; Allowable frameworks and structure to Assume the 404 Program*	??	Package Workgroup
	Analyzing and Documenting Federal Consistency, Sharing Permit and Reporting Forms; Crafting State Attorney General's Statement	May	Program Workgroup
	Creating §404 Program Elements – *Part A:* Monitoring & Assessment (for oversight and reporting) and Mitigation, incl. staffing, workload, funding	Jun	Package Workgroup
	Creating §404 Program Elements – *Part B:* Enforcement and Evaluation, incl. staffing, workload, funding	Jul	Program Workgroup
	Securing Data, Developing MOUS, Tribal Consultation, Building in Review Processes - coastal consistency, ESA and 404(b)(1); Developing BMPs	Aug	Program Workgroup
	Garnering Support for Assumption: Communications and Stakeholder Engagement	Sept	Package Workgroup
	Developing and Submitting a Complete Assumption Package	Oct	Full Workgroup

*Applicants must include: Program structure, regulated activities, anticipated coordination, permit review criteria and scope of permit extensions

National Assumption Dialogue Process: Where We Are
Sustainable Funding Dialogue

Start Here

2. Subworkgroup utilizes needs data and own experiences to brainstorm a list of questions for one of the key topic areas

Potentially around the six key focus areas

3. Using GoogleForms, ASWM solicits additional questions and needs requests on this topic from pre-identified list of representatives from states and tribes

Unique, new national dialogue element

Feeds into iterative project planning

6. Live webinar is delivered, Q&A session recorded, content documented, provided to workgroup for additional input into project efforts

Including live participant polls

4. Content requests are integrated into the workgroup list of questions and provided to presenters and workgroup

5. Revised list of questions/needs is used to structure both webinar content and Q&A categories

---

Conduct targeted outreach to ASWM's state and tribal contacts to determine a representative from their state/tribe to be invited to participate in the assumption discussion series.

Representatives will receive ongoing invitations to submit questions and discussion topics, and attend webinars focused on key assumption issues.

The project's national dialogue element will consist of a continuous flow among workgroup discussions, collection and integration of additional questions and need statements from states and tribes, and engagement with the broader population of webinar participants.

Questions will be gathered ahead of the webinar from states and tribes using GoogleForms, as well as solicited from the project's national workgroup.

Collected questions will be compiled, sorted and shared with the webinar presenters in advance of the webinar to better inform the presentations and format the Q&A session at the end into key themes

Targeted webinars will be delivered, including a 45-minute presentation, followed by a moderated group discussion (approximately 45 minutes) in a Q&A format on the topic.

Additional questions submitted during the webinar would be answered as time permits once all initial state and tribe questions are answered.

Assumption National Dialogue

SUSTAINABLE FUNDING TOPIC

Please share with us your questions and suggestions for resources to share or analyze around the issue of funding for assumed programs. This includes securing funding to explore assumption, funding to build a program for assumption, and implementing and sustaining an assumed program over time.

Submissions will be used by ASWM's Assumption Project Workgroup to help plan the development of support resources for states and tribes.

Submissions will be accepted on this topic on an ongoing basis, however, one week prior to the webinar all questions submitted by that date will be compiled and shared with webinar presenters to help guide their presentation development. Any additional questions submitted after this point will be answered as time allows.

Questions about this form or how your submission should be addressed to: Brenda Zollitsch at (207) 892-3399 or brenda@aswm.org.

Email address *

Valid email address

This form is collecting email addresses. Change settings

State and Tribal Wetland Program Staff
Got a Question? Want an Answer? Curious What Others are Doing? Identified a Gap or Need?

The Association of State Wetland Managers (ASWM) is hosting two series of specialized national dialogues through a combination of electronic input, targeted webinars and the development of resources to address needs identified through state/tribal wetland program staff input.

ASWM's current formal national dialogues are focused on two topics: a) state and tribal wetland program regulatory capacity building and b) Assumption of the Clean Water Act Section 404 Program.

Please let us know who from your state or tribe should be listed as a contact (you may want to list more than one and that is okay). Send your request to nationaldialogues@aswm.org.

ASWM's national dialogue approach allows ASWM to capture not only the breadth of questions and issues, but also specific needs at the state/tribal level. The national dialogues are a communications and planning process, not a survey or specific instrument of measurement. You will be asked to enter whatever you want to share or questions you have into a GoogleForm designed to track input on each topic.

This process has been designed to allow ASWM to engage both those states and tribes that already work with ASWM, as well as other states and tribes that have not been engaged with ASWM on these topics.

You are welcome to participate in any, all or none of the national dialogues. You might have one question on one topic or participate regularly with extensive detail. Whatever you want to share, **WE WANT TO HEAR FROM YOU!**

ASWM will be sending out a request for each national dialogue specifically to **state and tribal wetland program staff** over the coming year. You are invited to share your thoughts, ideas, questions of concerns on behalf of your state or tribe.

Each national discussion will initiate with the sending of a link to a simple **GoogleForm with 4-6 prompts requesting your input** - any questions you may have, needs or gaps you feel exist around the discussion topic, what resources you think we should include in our work and any connections think we might make to benefit the project (places to present, events to attend, people to contact, etc.)

This information will then be used to guide our topics, selection of presenters and the materials we create. It will also allow us to **help direct you to resources** (either from ASWM or external sources) if we are able to provide them.

Our first national dialogue is on the topic of Assumption and how assumption of the 404 Program is funded.
We are interested in your questions, comments or suggestions around funding for § 404 Assumption around the following topics:
- Exploring assumption;
- Building elements of an assumable program;
- Applying for assumption of the 404 Program;
- Implementing assumption plans;
- Evaluating assumed programs; and
- Sustaining an assumed program over time.

If you have a specific question, feel free to contact Brenda Zollitsch at brenda@aswm.org or call 207-892-3399.

Example of How ASWM Plans to Work Through Topics
Subworkgroup Work Approach Deliverables

Topic	Definition/ Description	Tools and Templates	Finding Existing Lessons Learned/ User Case Studies	Identified Best Practices	Developing Political Will/ Communication Strategies	Potential Webinar Topics/ Presenters
Funding for Assumption	Different types of needed funding (Exploring, Building, Implementing, Sustaining, Evaluating)	Sustainable funding research studies Funding plans Spreadsheets Funding applications/ asks to the legislature	E.g. Florida Minnesota Oregon	TBD	Strategies Documents Advice Lessons Learned	Andrea Celantano's work on financing WL program? Ongoing work by MN?

Mailing List for National Dialogue

Using § 401 contacts in states and any tribes on our mailing list

YOUR TASK:
- Please review list of email contacts
- Send any edits or additions

Webinar on Sustainable Funding for Assumption

- Types of funding needed throughout the assumption process

- Range of funding sources and options for states/tribes and how have they been used
  - How states have secured these sources of funding
  - Examples of funding plans from assumed/applying states

- Is there funding for states from federal agencies?

- How can states maximize funding for *existing* programs to cover 404 permitting? Is reallocation possible?

- Discussion on funding for:
  - Existing and new staff assigned to assumed program
  - Funding for new tasks (e.g. Section 10 ESA efforts)
  - Additional legal costs to the state/tribe related to assumed activities

- Avoiding conflict of interest between funding sources and permit applications

PROGRAM DEVELOPMENT Subworkgroup	PACKAGE DEVELOPMENT Subworkgroup
• Stacia Bax (MO)	• Eliodora Chamberlain, EPA
• Eliodora Chamberlain, EPA	• Laura Johnson/Josh/Marty (NE)
• Denise Clearwater (MD)	• Laura Lapierre (VT)
• Jasper Hobbs (ACWA)	• Amy Lounds/Ann (MI)
• Laura Johnson (NE)/Josh	• Les Lemm (MN)/Lewis Brockette
• Les Lemm (MN)/Lewis Brockette	• Heather Mason (FL)
• Amy Lounds/Ann (MI)	• Jim Pendergast
• Heather Mason (FL)	• Barbara Poage (OR)
• Martha Mettler (IN)	• Jim Rypkema (AK)
• Eric Metz (OR)	
• Heather Preston (NC)	
• Andy Robertson (SMU)	
• Jim Rypkema (AK)	
• Joe Williams (EP)	

Still to Choose
Collis Adams (NH, Ret)
Mark Biddle (DE)
Michael Hare (RES)
Steve Hurt (MT)
Bill Ryan (OR)
Paul Wojoski (NC)

Assumption presents an opportunity for states to take a stronger role in the regulation of aquatic resources within their state boundaries.

Several states are actively working to assess the option to assume and develop assumption applications. Other states are trying to assess their assumable waters and determine if assumption makes financial and regulatory sense. Most are interested in reducing regulatory permitting time. The number of states interested in assumption may continue to increase in response to the current Administration's efforts to encourage assumption.

However, the two states who have successfully assumed the §404 program to date (New Jersey and Michigan), neither of which can serve as models for other states to replicate as a result of changes in CWA regulations and policies in recent years.

Some states have strong dredge and fill programs, but the majority are reliant on §401 certification as their only regulatory tool. For these states, going from no state program to assumption is a steep climb requiring the development of many elements of dredge and fill programs and changes in state statutes and regulations, as well as securing funding and staffing to run a new state program as it prepares to assume.

ASWM seeks to help states understand their responsibilities in the assumption relationship, provide them with tools to improve their assumption assessment processes and increase the number of complete assumption packages being submitted nationally. This project is designed to help states work towards understanding and developing the elements required to become eligible for assumption.

Elements of a Complete §404 Assumption Application

Formal Required Elements Listed On EPA Website

- Cover Letter (from Governor/tribal leader)

- Complete program description

- Copies of all applicable state or tribal statutes and regulations administering the program.

- Attorney General's Statement/ tribal equivalent

- Memoranda of Understanding
    - State/Tribe MOU with EPA
    - State/Tribe MOU with Corps

Program Description Components

- Description of the scope and structure of the program, including **jurisdiction, activities regulated**, anticipated coordination, **permit review criteria**, and **scope of permit exemptions**, if any
    - Includes legislation and regulations
- **Structure and organization** of state or tribal agency responsible for program administration
- Funding and staffing levels
- **Procedures for permitting, administrative review and judicial review**
- Anticipated workload
- Copies of **permit application forms, permit forms, and reporting forms**
- Compliance **evaluation and enforcement** programs
- Description of the waters under state jurisdiction and those under the U.S. Army Corps of Engineers (Corps) jurisdiction
- Best Management Practices proposed to satisfy farm, forest, and temporary mining roads exemption provisions

Federal Consistency Analysis

Assumable Waters Analysis

Acceptable frameworks for assumed §404 Programs

Topic	Definition/ Description	Tools and Templates	Finding Existing Options (general/ case studies)	Identified Best Practices	Developing Political Will/ Agreements with (for gateway)	Potential Webinar Topics Presented
Assumption Frameworks	What is a framework How does it work? What are acceptable alternative frameworks?	Examples of current models Examples of models being submitted (not yet approved) Samples of documents that passed EPA review		Suggestions from EPA Shared practices from states	Talking points How to effectively share findings/ reports	EPA staff re expectations Lessons learned from state panel

Whether or not and when to include hot issues (controversial/unresolved):
- Partial Assumption
- Municipal inclusive framework

Questions for Subworkgroup Today

- What is an assumption program framework?

- What does it do? What does it affect?

- What guidance or resources exist to explain/guide framework decisions?

- What are some of the different framework structures?

- What is the status of these frameworks   in terms of being approved by EPA?

- When include assumption frameworks in the national dialogues/webinar series order?

What is an assumption program framework? What does it do? What does it affect?

What guidance or resources exist to explain/guide framework decisions?

What are some of the different framework structures?

What is the status of these frameworks
in terms of being approved by EPA?

When should ASWM include assumption frameworks in the national dialogues/where in webinar series order?

1	Assumption 101: What, Why, Current Initiatives, Intro to ASWM Project
2	Developing Funding Strategies to Explore, Build, Implement and Sustain Assumed 404 programs
3	Identifying and Documenting Assumable Waters/What you know about waters or wetlands in your state – what do we gain?
4	EPA's new Assumption Rule; Allowable frameworks and structure to Assume the 404 Program*
5	Analyzing and Documenting Federal Consistency, Sharing Permit and Reporting Forms; Crafting State Attorney General's Statement
6	Creating §404 Program Elements – *Part A:* Monitoring & Assessment (for oversight and reporting) and Mitigation, incl. staffing, workload, funding
7	Creating §404 Program Elements– *Part B:* Enforcement and Evaluation, incl. staffing, workload, funding
8	Securing Data, Developing MOUS, Tribal Consultation, Building in Review Processes - coastal consistency, ESA and 404(b)(1); Developing BMPs
9	Garnering Support for Assumption: Communications and Stakeholder Engagement
10	Developing and Submitting a Complete Assumption Package

Upcoming Call Agenda

February 10, 2019

Full Workgroup

* Project update
* Subworkgroup updates
* Webinars:
    * Webinar 1 (Assumption 101)– Review; next steps
    * Webinar 2 (Sustainable Funding) – Delivery plans

FOCUS: Package Development Subworkgroup

* Federal consistency analysis

Volunteer Log

Thank you for volunteering your time & expertise with ASWM. Please use our online Volunteer Log to enter your hours for <u>each week</u> you have volunteered on <u>each project</u> you are involved with.

Step 1:   Follow <u>THIS LINK</u> to ASWM's online volunteer log.

Step 2:   Enter your name & organization.

Step 3:   Select the project you want to log your hours for from the drop down list.

Step 4:   Enter the date & total number of hours you volunteered for the selected project on that day.

Step 5:   Check the box to certify that the hours entered are accurate & click submit.

NOTE: **Volunteer hours must be entered for each project individually.**

For assistance logging your volunteer hours please contact:
Laura Burchill at laura@aswm.org or 207-892-3399.

Project Contact

Brenda Zollitsch, Senior Policy Analyst
Association of State Wetland Managers
32 Tandberg Trail, Suite 2A, Windham, ME 04062
(207) 892-3399; brenda@aswm.org

What Documents/Analyses Are Usually Created to Meet these Requirements?

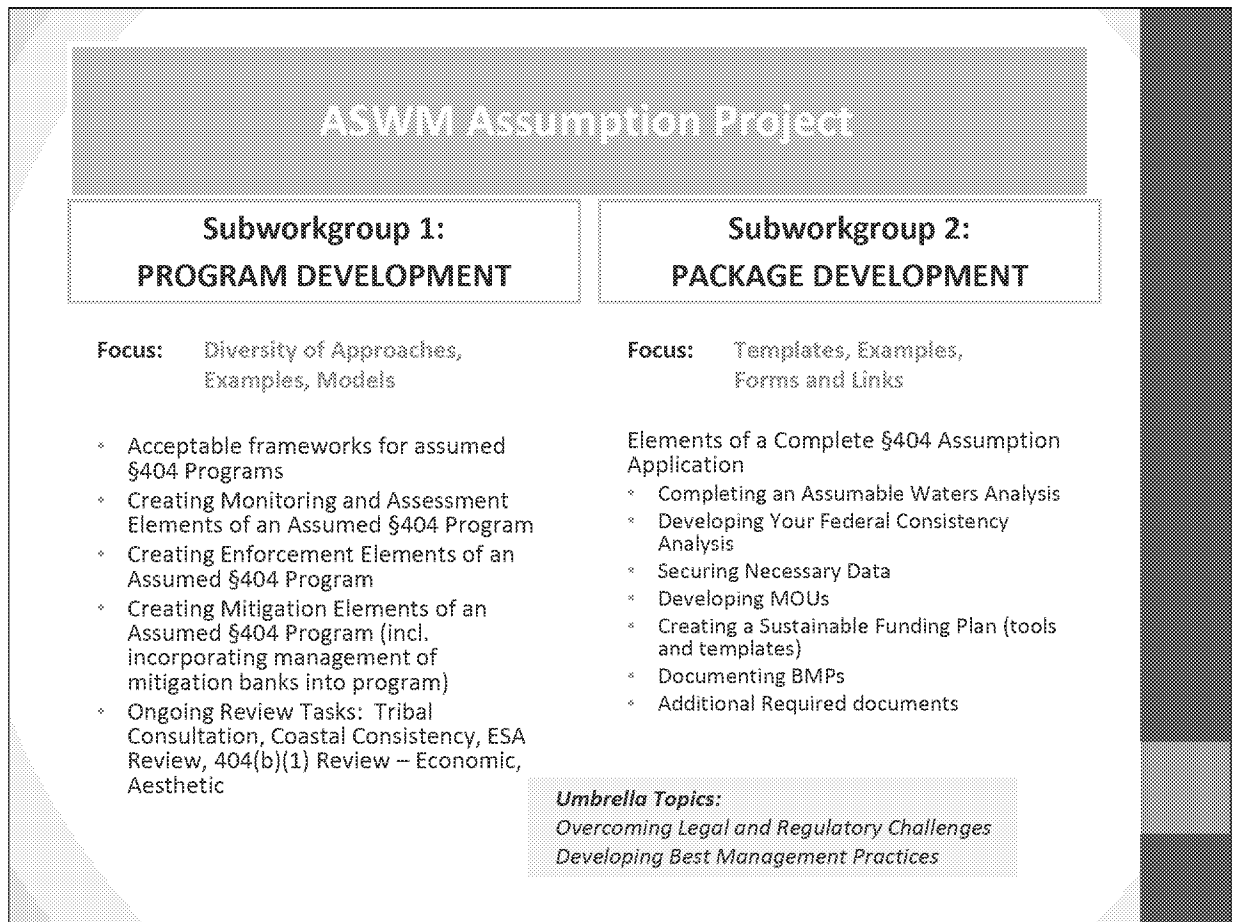| Program Description Element	Supporting Docs/Analyses
Description of the scope and structure of the program, including jurisdiction, activities regulated, anticipated coordination, permit review criteria, and scope of permit exemptions, if any	Ex. FL - Report form; concise descriptions (referred to NJ's); Describe how coordinate between two agencies and with wildlife, historical resources agencies. Permit review – review of rules and basic description; specific activities – cut and paste from rules
Anticipated workload	Ex. FL – Worked with ACOE for def of retained water; still working on GIS layer (which will be assumed/retained by Corps); asked for corps permit data from last 5 years (lat/long info) into GIS layer and overlayed with permit location data. Those fall within assumed waters – looked at NW and indiv permits – to calc how many to expect at the state level. MN – Don't know about what changes will need to make in program structure. Slight increase in jurisdiction; moreso assumption work tasks. OR – Preliminary – looking at crosswalk matching out rules and statues. Considering workload and capacity as moving forward (anticipating additional workload, incl. one archaeologist, partner agency ESA)
Copies of permit application forms, permit forms, and reporting forms	MD – May not be easy to get agreed upon form (beyond indiv. District); May not be using exact same form (if 404 form merged with other state requirements). Expanded form for larger activities; shorter for smaller; may need to accommodate additional state-only waters; instructions, sample plans, checklists etc. all required to come to mutual agreement. FL – ERP form – added 404 to name and a new section (i) any additional info required for 404 that was not already included. Permit template changed to be specific to 404 and copies added to package; looks like

ASWM Presentation: Key Components of Assumption
Content Outline for Discussion
Last Revised 11-18-19

- Pose series of common questions about assumption at the beginning of webinar

- What is assumption?

- History of assumption
  - Origins
  - Michigan
  - New Jersey
  - No additional states or tribes since
  - Reasons states/tribes have not assumed

- What has changed since then?
  - Assumable waters issue has changed
  - EPA looking at rulemaking/encouraging
  - States interested for new reasons
  - Treatment as a state (tribal assumption)

- Benefits of assumption

- Determining stakeholder interest in assumption
  - Interest level
  - Willingness to pay (as a gamechanger)

- Requirements for assumption

- What must be provided in an assumption application?
  - Letter from the Governor or equivalent tribal leader requesting program approval
  - Complete *program description* (see next section)
  - Statement from the Attorney General or tribal equivalent certifying that the state has legal
  - authority to meet all federal requirements
  - MOU with the respective Regional Administrator
  - MOU with the Secretary of the Army
  - Copies of all applicable state or tribal statutes and regulations, including those governing applicable state or tribal administrative procedures.

- At their presentations - MI and NJ – lessons learned at high level
- A closer look at the application's program description
  - A description of the scope and structure of the program,
  - Procedures - permitting, administrative and judicial review
  - Structure and org of state or tribal agency responsible
  - Funding and staffing levels
  - Anticipated workload
  - Copies of permit application, permit & reporting forms;
  - Compliance evaluation and enforcement programs
  - Description of the waters under state jurisdiction and those under Corps jurisdiction;
  - BMPs proposed to satisfy exemption provisions

- Basic steps in assumption
  - Step 1 - Initiate
  - Step 2 – Hold dialogue prior to assumption request
  - Step 3 – Develop and submit assumption package
  - Step 4 – EPA review and approval

- Two Specific Considerations:
  - What are "assumable waters?"
  - What is a "Federal Consistency Analysis"
  - What about the ESA?
  - Replacing federal 106 reviews with state authority

- What's happening with assumption now?
  - EPA intends to "modernize" 404(g) regulations to assist the authorized states and tribes in assuming this authority.
  - EPA is currently engaged in the § 404(g) rulemaking process.

- I'm interested, now what?

- Where to look for more information

Subworkgroup 1:
PROGRAM DEVELOPMENT

Subworkgroup 2:
PACKAGE DEVELOPMENT

Focus: Diversity of Approaches, Examples, Models

Focus: Templates, Examples, Forms and Links

- Acceptable frameworks for assumed §404 Programs
- Creating Monitoring and Assessment Elements of an Assumed §404 Program
- Creating Enforcement Elements of an Assumed §404 Program
- Creating Mitigation Elements of an Assumed §404 Program (incl. incorporating management of mitigation banks into program)
- Ongoing Review Tasks: Tribal Consultation, Coastal Consistency, ESA Review, 404(b)(1) Review – Economic, Aesthetic

Elements of a Complete §404 Assumption Application
- Completing an Assumable Waters Analysis
- Developing Your Federal Consistency Analysis
- Securing Necessary Data
- Developing MOUs
- Creating a Sustainable Funding Plan (tools and templates)
- Documenting BMPs
- Additional Required documents

Umbrella Topics:
Overcoming Legal and Regulatory Challenges
Developing Best Management Practices

Assumption presents an opportunity for states to take a stronger role in the regulation of aquatic resources within their state boundaries.

Several states are actively working to assess the option to assume and develop assumption applications. Other states are trying to assess their assumable waters and determine if assumption makes financial and regulatory sense. Most are interested in reducing regulatory permitting time. The number of states interested in assumption may continue to increase in response to the current Administration's efforts to encourage assumption.

However, the two states who have successfully assumed the §404 program to date (New Jersey and Michigan), neither of which can serve as models for other states to replicate as a result of changes in CWA regulations and policies in recent years.

Some states have strong dredge and fill programs, but the majority are reliant on §401 certification as their only regulatory tool. For these states, going from no state program to assumption is a steep climb requiring the development of many elements of dredge and fill programs and changes in state statutes and regulations, as well as securing funding and staffing to run a new state program as it prepares to assume.

ASWM seeks to help states understand their responsibilities in the assumption relationship, provide them with tools to improve their assumption assessment processes and increase the number of complete assumption packages being submitted nationally. This project is designed to help states work towards understanding and developing the elements required to become eligible for assumption.

ASWM Assumption Project Focus Areas

- **Assumption 101: What, Why, Current Initiatives, Intro to ASWM Project**

- **Developing Funding Strategies to Explore, Build, Implement and Sustain Assumed 404 programs**

- Garnering Support for Assumption: Communications and Stakeholder Engagement

- Identifying and Documenting Assumable Waters/What you know about waters or wetlands in your state – what do we gain?

- Allowable frameworks and structure to Assume the 404 Program; EPA's new Assumption Rule

- Analyzing and Documenting Federal Consistency, Sharing Permit and Reporting Forms

- Creating §404 Program Elements – including staffing, workload and funding plans
  - Monitoring & Assessment (oversight and reporting)
  - Mitigation
  - Enforcement
  - Evaluation

- Securing Data, Developing MOUS, Tribal Consultation, Building in Review Processes - coastal consistency, ESA and 404(b)(1); Developing BMPs

- Developing and Submitting a Complete Assumption Package

Environmental Topics   Laws & Regulations   About EPA   [Search EPA.gov]

State and Tribal Assumption of Section 404 of the Clean Water Act

CONTACT US

SHARE (f) (✓) (🔗) (✉)

CWA Section 404
Assumption Home

About Assumption

Statutory and Regulatory
Requirements

Assumption Process and
Requirements

Assumption Request
Package

Assumption Request
Approval Process

Current Efforts Regarding
Assumption

State and Tribal Assumption -
U.S. Interactive Map

Assumption Request Package under CWA Section 404

What Needs to be Submitted to EPA?

The requirements for a complete assumption request package are described in EPA Section 404(g) regulations (40 CFR 233.10-233.16). A state or tribal package requesting Section 404(g) assumption shall include:

1. A letter from the Governor or equivalent tribal leader;
2. A Complete program description;
3. An Attorney General's statement or tribal equivalent;
4. A Memorandum of Agreement (MOA) with the respective EPA Regional Administrator;
5. An MOA with Secretary of Army (through the Chief of the U.S. Army Corps of Engineers); and
6. Copies of all applicable state or tribal statutes and regulations administering the program.

The state or tribe should submit a **letter from the governor or equivalent tribal leader** requesting program assumption approval.

A **complete program description** (40 CFR 233.11) includes but is not limited to:

- A description of the scope and structure of the program, including jurisdiction, activities regulated, anticipated coordination, permit review criteria, and scope of permit exemptions, if any;
- Procedures for permitting, administrative review and judicial review;
- Structure and organization of state or tribal agency responsible for program administration;
- Funding and staffing levels;
- Anticipated workload;
- Copies of permit application forms, permit forms, and reporting forms;
- Compliance evaluation and enforcement programs;
- Description of the waters under state jurisdiction and those under the U.S. Army Corps of Engineers (Corps) jurisdiction; and
- Best Management Practices proposed to satisfy farm, forest, and temporary mining roads exemption provisions.

Special Topic
Tribes & Assumption

- Assumption of the §404 Program by tribes
- Considerations for Tribes around State §404 Program Assumption
- Tribal consultation as part of state assumption of the §404 Program
- Ongoing involvement of tribal consultation as part of assumed program activities

Andy Roberston, Barbara (OR), Les Lemm (MN – how state coord when assuming), Heather M. (FL), Joe Williams, Eliodora Chamberlain, Dolores Wesson

Assumption presents an opportunity for states to take a stronger role in the regulation of aquatic resources within their state boundaries.

Several states are actively working to assess the option to assume and develop assumption applications. Other states are trying to assess their assumable waters and determine if assumption makes financial and regulatory sense. Most are interested in reducing regulatory permitting time. The number of states interested in assumption may continue to increase in response to the current Administration's efforts to encourage assumption.

However, the two states who have successfully assumed the §404 program to date (New Jersey and Michigan), neither of which can serve as models for other states to replicate as a result of changes in CWA regulations and policies in recent years.

Some states have strong dredge and fill programs, but the majority are reliant on §401 certification as their only regulatory tool. For these states, going from no state program to assumption is a steep climb requiring the development of many elements of dredge and fill programs and changes in state statutes and regulations, as well as securing funding and staffing to run a new state program as it prepares to assume.

ASWM seeks to help states understand their responsibilities in the assumption relationship, provide them with tools to improve their assumption assessment processes and increase the number of complete assumption packages being submitted nationally. This project is designed to help states work towards understanding and developing the elements required to become eligible for assumption.

Subworkgroup 1: PROGRAM DEVELOPMENT	Subworkgroup 2: PACKAGE DEVELOPMENT

Focus: Diversity of Approaches, Examples, Models

- Acceptable frameworks for assumed §404 Programs
- Creating Monitoring and Assessment Elements of an Assumed §404 Program
- Creating Enforcement Elements of an Assumed §404 Program
- Creating Mitigation Elements of an Assumed §404 Program (incl. incorporating management of mitigation banks into program)
- Ongoing Review Tasks: Tribal Consultation, Coastal Consistency, ESA Review, 404(b)(1) Review – Economic, Aesthetic

Focus: Templates, Examples, Forms and Links

Elements of a Complete §404 Assumption Application

- Developing Your Federal Consistency Analysis
- Completing an Assumable Waters Analysis
- Securing Necessary Data
- Developing MOUs
- Creating a Sustainable Funding Plan (tools and templates)
- Documenting BMPs
- Additional Required documents

Umbrella Topics:
Overcoming Legal and Regulatory Challenges
Developing Best Management Practices

Assumption presents an opportunity for states to take a stronger role in the regulation of aquatic resources within their state boundaries.

Several states are actively working to assess the option to assume and develop assumption applications. Other states are trying to assess their assumable waters and determine if assumption makes financial and regulatory sense. Most are interested in reducing regulatory permitting time. The number of states interested in assumption may continue to increase in response to the current Administration's efforts to encourage assumption.

However, the two states who have successfully assumed the §404 program to date (New Jersey and Michigan), neither of which can serve as models for other states to replicate as a result of changes in CWA regulations and policies in recent years.

Some states have strong dredge and fill programs, but the majority are reliant on §401 certification as their only regulatory tool. For these states, going from no state program to assumption is a steep climb requiring the development of many elements of dredge and fill programs and changes in state statutes and regulations, as well as securing funding and staffing to run a new state program as it prepares to assume.

ASWM seeks to help states understand their responsibilities in the assumption relationship, provide them with tools to improve their assumption assessment processes and increase the number of complete assumption packages being submitted nationally. This project is designed to help states work towards understanding and developing the elements required to become eligible for assumption.